



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an early end to this tenancy and an Order of Possession pursuant to section 56; and
- authorization to recover the filing fee for this application from the Tenants pursuant to section 72.

At the start of the hearing, I confirmed that E.M. and R.T. attended the hearing as agents for the Landlord. The Tenant P.F. attended the hearing on his own behalf and had S.W. attend with him as his advocate. As well, Manager M.J. attended as a representative of the health care provider that was a co-tenant on the tenancy agreement. All in attendance provided a solemn affirmation.

The agents for the Landlord confirmed that they served the Tenants the Notice of Hearing package on April 12, 2018 via registered mail, and the Tenants confirmed receipt of this package. In accordance with sections 89 and 90 of the Act, I am satisfied that the Tenants were served with the Notice of Hearing package.

I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Landlord entitled to an early end to this tenancy and an Order of Possession?
- Is the Landlord entitled to recover the filing fee for this application from the Tenants?

### Background and Evidence

The Landlord stated that the tenancy started on July 1, 2014 as a fixed term for one year, and then converted to a month to month tenancy afterwards. Rent was established at \$1,100.00 per month, due on the first of each month, but was subsequently increased over the years, and was currently at \$1,202.00 per month. A security deposit of \$550.00 was also paid. The Tenant P.F. confirmed these details.

M.J. stated that a former employee of the health care provider mistakenly signed the tenancy agreement as a co-tenant. He testified that the health care provider recently discovered this error and wanted to be removed from the tenancy agreement but did not want to end the tenancy for P.F. He submitted that a letter was sent to P.F. on March 26, 2018 advising him of this situation and that the health care provider would be ending the tenancy with a written notice to the Landlord, and this would end also end his tenancy. The notice to end tenancy was dated March 26, 2018, with an effective end date of tenancy of April 30, 2018.

S.W. stated that P.F. came to him to determine whether or not the health care provider was a co-tenant. P.F. and M.J. confirmed that the health care provider stopped paying rent on July 1, 2016 and that P.F. had been paying the rent in full. P.F. drew my attention to an Application (the file number is on the cover page of this decision for ease of reference) that was made with respect to determining whether the health care provider was a co-tenant, and whether their notice to end tenancy was valid.

E.M. outlined the reasons for the early end to tenancy Application. She stated that after receiving the notice to end the tenancy from the health care provider, they advertised the rental unit, but P.F. stated that he would not vacate. After being advised by her employer to show the rental unit to prospective tenants, she served P.F. with the proper written notice to enter the premises, and R.T. showed the rental suite on April 7, 2018. She stated that during the first showing, P.F. sabotaged it by providing the prospective tenants with misinformation regarding the living conditions there. During the second showing, R.T. requested that P.F. not sabotage this showing; however, P.F. continued to provide negative comments about the premises and stated that he would not be leaving the suite. R.T. again asked P.F. not to sabotage the next showing and advised him that finding a suitable next tenant would be less inconvenient for P.F. as there would not be any more viewings. During the third showing, R.T. and the prospective tenants observed a gun on the bedside table that was not there on previous showings. The prospective tenants stated that they were wary of being a victim of P.F. When R.T. asked if the gun was real, P.F. stated that it was none of his business. R.T. took a picture of the gun and notified the police. E.M. testified that the police dispatched approximately 20 officers, evacuated the residents from the building, evacuated some residents of an adjacent building, were present on scene for approximately two hours, and eventually discovered that it was not a real firearm.

E.M. stated that at least 20 suite inspections over the last four years have been done at this rental unit and the gun was never seen before. She also submitted that the gun was not

observed by anyone on the first two showings on April 7, 2018. She stated that placing the gun in plain sight on this third showing was a bullying and intimidation tactic and is viewed as a threat. As a result of this incident, E.M. submitted that the strata and the tenants of the building are concerned for their safety, that the Landlord has advised staff not to engage with P.F. to protect their safety, and that the Landlord is suffering from a financial loss as they have avoided further showings of the rental unit. She stated that the tone of P.F.'s written submission indicates that P.F. does not understand the ramifications of his actions and regardless of his intention, this was a dangerous act that warrants an early end to the tenancy. She also stated that she attempted to negotiate a mutual agreement to end the tenancy but that was unsuccessful.

S.W. asked if the Landlord called the police emergency line or not. E.M. advised that the non-emergency line was called and that R.T. took the picture of the gun directly to the police station.

P.F. refuted the allegation that he was sabotaging the showings and he testified that he was simply answering questions that the prospective tenants were asking him. He stated that R.T. had insulted him in front of the prospective tenants and had called him names, and that he only asked about the gun after the last showing. He refuted the number of times E.M. indicated that suite inspections were conducted, he stated that the gun has been prominently displayed on his nightstand or in the open for the last two to three years, and that the gun was on his nightstand for all of the showings. He also stated that he did not make any threats or show any aggression, but he did not answer R.T.'s question about the gun as he did not want to engage in conversation after being insulted. P.F. stated that at 7:30 PM that evening, the police called him advising him they were outside his door. They handcuffed him for approximately ten minutes, searched his rental unit, and seized the gun; however, he got the gun back the next day. He confirmed that there was a substantial police presence; however, he refuted the allegation that the building was evacuated as he had observed tenants moving throughout the building.

S.W. asked P.F. if the Landlord had communicated with him since April 7, 2018 and P.F. indicated that there was no communication. S.W. acknowledged that P.F.'s behaviour on April 7, 2018 was not warranted, but it is his belief that the appropriate course of action would have been to serve a warning letter and then a One Month Notice to End Tenancy for Cause if the problem persisted. He referred to P.F.'s written submission acknowledging that he should have responded about the gun honestly and the police would not have been involved; however, he reiterated that there was not an intention to make any threats. S.W. reiterated that P.F. is not an immediate risk and the early end to the tenancy is not justified.

E.M. disagreed with P.F.'s comments that R.T. would have insulted him during the showings as this is not in his character and it would not make sense for him to insult P.F. in front of the prospective tenants as they would also be concerned he might treat them in the same manner.

M.J. testified that P.F. was angry with the health care provider, which he found to be understandable. However, in his interactions, P.F. has been very cordial, reasonable, and has never demonstrated any poor behaviour.

### Analysis

As this is the Landlord's Application pertaining to an early end of tenancy, I will not be rendering a decision regarding the health care provider mistakenly being added as a Tenant on the tenancy agreement. This issue, pending the outcome of my decision on the early end of tenancy, may still be heard at the future hearing.

Section 56 of the *Act* establishes the grounds for a Landlord to make an Application requesting an early end to a tenancy and the issuance of an Order of Possession. In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the Tenants have done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, **and***

*it would be unreasonable, or unfair to the landlord, the tenant or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.*

Based on the evidence and sworn testimony before me, I find that the admitted negligence of P.F. withholding information regarding whether or not his gun was a real firearm directly led to the undisputed substantial police response. While P.F. stated that he did not answer R.T.'s question about whether the gun was real because R.T. had insulted him and he did not want to engage anymore, I do not find that it makes sense that R.T. would have exchanged these insults in front of prospective tenants. As such, I am doubtful of P.F.'s testimony on this point.

Furthermore, while there is some disagreement on the extent of the building being evacuated, I find it reasonable to infer that the considerable police presence indicates that they determined this could have been a real firearm. As such, I find it more likely than not that the police would have evacuated the entire building as a safety precaution. Consequently, I am doubtful of the legitimacy of P.F.'s testimony on this point as well. I find that there is sufficient evidence before me to question the reliability of the Tenant's submissions on the whole, and I am satisfied that the consequences of the Tenant's actions significantly interfered with or unreasonably disturbed other occupants in this multi-residential building.

The Landlord must also demonstrate that "it would be unreasonable, or unfair to the landlord, the tenant or other occupants of the residential property, to wait for a notice to end the tenancy under section 47" for cause to take effect. While P.F. questioned the number of inspections E.M. and R.T. conducted, he did still indicate that there were multiple inspections over the years. I do not find it reasonable that neither E.M. nor R.T. would not have observed the BB gun in any of those inspections, had it been displayed in the open as P.F. alleged. Moreover, I do not find it reasonable that R.T. or any prospective tenants would not have observed the gun on the nightstand during any of the previous showings that day, or that it would not have been brought up as being significant. As such, I do not find it likely that P.F. displayed this gun in the open as a common practice, and I accept that he more likely than not placed it in the open intentionally during the last showing of the rental unit. Consequently, I am satisfied that while this may not have been a direct threat, it does constitute in my mind to be at the very least a deliberate attempt to sabotage any efforts to rent the premises, and at most, a veiled threat and a dangerous act.

In addition, while it was determined that P.F. did not possess a real firearm, I accept that there is likely genuine concern amongst the other tenants in the building regarding this issue still, which also impacts their right to quiet enjoyment of their residences. I also do find it reasonable that there is hesitation on behalf of the Landlord in putting the safety of their staff or the safety of future prospective tenants in jeopardy, despite this not being a real firearm.

Under these circumstances, I find that it would be unreasonable and unfair to other tenants in the building and the Landlord to wait for a One Month Notice to End Tenancy for Cause to take effect. For these reasons, I find that the Landlord has provided sufficient evidence to warrant ending this tenancy early. As such, I find that the Landlord is entitled to an Order of Possession.

As the Landlord was successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. Under the offsetting provisions of section 72 of the *Act*, I allow the Landlord to retain this \$100.00 from the security deposit in lieu of a Monetary Order, if the Landlord chooses.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord is provided with a Monetary Order in the amount of \$100.00. However, I allow the Landlord to recover the \$100.00 filing fee by allowing the Landlord to retain \$100.00 from the security deposit for this tenancy, if they choose.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 11, 2018

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Residential Tenancy Branch